

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JUAN CASTRO, 11-B-2930,

Plaintiff,

v.

12-CV-1242A(Sr)

PAUL SOBKOWIAK, et al.,

Defendants.

DECISION AND ORDER

This case was referred to the undersigned by the Hon. Richard J. Arcara, pursuant to 28 U.S.C. § 636(b)(1), for all pretrial matters and to hear and report upon dispositive motions. Dkt. #19.

Currently before the Court is defendant Jeffrey Brewer's motion to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Dkt. #37. In support of the motion, defendant avers that he is a member of University at Buffalo Surgeons, Inc., which has a contract to provide surgical services at Erie County Medical Center Corporation, but is not employed by the Erie County Medical Center Corporation, the State of New York, or the New York State Department of Corrections. Dkt. #37-2.

As a result of this submission, the Court deems it necessary to invoke the following provision set forth in Fed. R. Civ. P. 12(d):

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material made pertinent to the motion.

In accordance with *Irby v. New York City Transit Authority*, 262 F.3d 412 (2d Cir. 2001), attached is a notice of the requirements of Rule 56 of the Federal Rules of Civil Procedure and the consequences of noncompliance with the rules. Plaintiff's response shall be filed no later than **June 19, 2015**. Replies, if any, shall be filed no later than **July 10, 2015**.

SO ORDERED.

DATED: **Buffalo, New York**
May 8, 2015

s/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge